

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Reclamation and Enforcement

4 (Amendment)

5 405 KAR 20:040. Prime farmland.

6 RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465

7 STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.450, 350.465

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part
9 requires the cabinet to promulgate environmental protection performance standards specifically
10 including special requirements for the protection of prime farmland. This administrative regulation
11 specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime
12 farmland.

13 Section 1. Scope and Purpose. This administrative regulation sets forth special
14 environmental protection performance, reclamation, and design standards for surface coal mining
15 and reclamation operations on prime farmland.

16 Section 2. Responsibilities. (1) The federal regulations at 30 C.F.R. Part 823 require that
17 the U.S. Soil Conservation Service (SCS) within each state establish specifications for prime
18 farmland soil removal, storage, replacement, and reconstruction.

19 (2) The federal regulations at 30 C.F.R. Part 823 require that the cabinet use the soil-
20 reconstruction specifications established by the SCS, as referenced in subsection (1) of this section,
21 to carry out its responsibilities. [Therefore, the following document is incorporated herein by

1 ~~reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land~~
2 ~~Restoration, Currently Mined Prime Farmland," January 1986. Copies may be obtained from the~~
3 ~~Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.]~~

4 Section 3. Applicability. The requirements of this administrative regulation, including the
5 SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to
6 prime farm-land affected by surface coal mining and reclamation operations except that which has
7 been excluded in accordance with 405 KAR 8:050, Section 3(1).

8 Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from
9 the are-as to be disturbed before drilling, blasting, or mining.

10 (2) The minimum depth of soil and soil materials to be removed and stored for use in the
11 reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of
12 this administrative regulation.

13 (3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

14 (a) Separately remove the topsoil, or remove other suitable soil materials where such other
15 soil materials will create a final soil having a greater productive capacity than that which exist
16 prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate
17 from the spoil and all other excavated materials; and

18 (b) Separately remove the B or C horizon or other suitable soil material to provide the
19 thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized
20 immediately, each horizon or other material shall be stockpiled separately from the spoil and all
21 other excavated materials. Where combinations of such soil materials created by mixing have been
22 shown to be equally or more favorable for plant growth than the B horizon, separate handling is
23 not necessary.

1 (4) Stockpiles shall be placed within the permit area where they will not be disturbed or be
2 subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet
3 the requirements of 405 KAR 16:050 or 18:050.

4 Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to
5 be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface
6 horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined
7 necessary to restore the original soil productive capacity. The determination of whether a horizon
8 inhibits or prevents root penetration shall be in accordance with the SCS specifications under
9 Section 2 of this administrative regulation.

10 (2) The operator shall replace and regrade the soil horizons or other root-zone material with
11 proper compaction and uniform depth.

12 (3) The operator shall replace the B horizon, C horizon, or other suitable material specified
13 in Section 4(3)(b) of this administrative regulation to the thickness needed to meet the
14 requirements of subsection (1) of this section.

15 (4) The operator shall replace the topsoil or other suitable soil materials specified in Section
16 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall
17 equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

18 Section 6. Revegetation and Restoration of Soil Productivity. (1) Requirements for
19 revegetation and demonstration of successful restoration of soil productivity are set forth in
20 "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining,"
21 Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation
22 Service [~~June 1985. This document is incorporated herein by reference. Copies may be obtained~~
23 ~~from the department~~].

1 (2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet.
2 The permittee shall notify the appropriate regional office of the department of harvest dates in
3 order to provide the opportunity for cabinet personnel to monitor yield measurements. This
4 notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall
5 be followed up by telephone prior to actual harvest dates.

6 (3) ~~[Irrespective of the provisions of 405 KAR 1:005,]~~ This section shall also apply to
7 prime farmland mined under the interim regulatory program under 30 CFR Part 715 ~~[405 KAR~~
8 ~~1:250]~~.

9 Section 7. Incorporation by Reference. (1) The following material is incorporated by
10 reference:

11 (a) "Soil Conservation Service, Kentucky Standard and Specifications for Land
12 Restoration, Currently Mined Prime Farmland," January 1986;

13 (b) "Kentucky Prime Farmland Revegetation and Crop Production Restoration after
14 Mining," June 1985.

15 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
16 law, at the Division of Mine Permits, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday
17 through Friday, 8 a.m. to 4:30 p.m.

405 KAR 20:040 approved for filing.
Pages (1-4)

9/13/2019

Date

Charles G. Snavely

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 20:040
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

(b) The necessity of this administrative regulation: This administrative regulation is necessary establish the requirements related to prime farmland.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.450 authorizes the department to regulate the mining of an area that contains prime farmland. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Commonwealth's requirements related to the mining of an area that contains prime farmland.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes references to the interim program administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary remove citations to the interim program administrative regulations, which were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring citations to the interim program administrative regulations are removed.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.450 requires the cabinet to promulgate administrative regulations related to prime farmland. These amendments are necessary to remove citations to the interim program administrative regulations, which were repealed in 2018.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates a coal mine that could impact prime farmland.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be subject to the same requirements prior to the repeal of the interim program administrative regulations. The amendment simply removes citations to the interim program administrative regulations, which were repealed in 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in questions (3) will benefit from this amendment by having an administrative regulation with the outdated citations removed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendment to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that have a coal mine operation on prime farmland will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 20:040
Contact Person: Michael Mullins, Reg. Coordinator

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1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.100, 350.450, 350.465.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.
 - (c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.
 - (d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 20:040
Contact Person: Michael Mullins, Reg. Coordinator

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1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 823.
2. State Compliance Standards. KRS 350.450.
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to coal operations on prime farmland.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments simply remove outdated references to administrative regulations that were repealed in 2018. The removal of this information does not make the administrative regulation more stringent than the corresponding federal administrative regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA